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IN THE

Supreme Court of the United States

October Term, 1969

No. 338

UNITED STATES OF AMERICA, ex rel.
EUGENE HAIRSTON,

Petitioner,

vs.

FRANK J. PATE, Warden, Illinois State Penitentiary; and, HERBERT D. BROWN, Director of Public Safety,

Respondents.

(On Petition For Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit)

BRIEF FOR RESPONDENTS IN OPPOSITION TO GRANTING CERTIORARI

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BRIEF FOR RESPONDENTS IN OPPOSITION TO GRANTING CERTIORARI

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner relies on the Eighth and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

1. Whether the Petitioner has an Eighth Amendment right to bail pending appeal of state conviction.

2. Whether denial of bail to Petitioner pending appeal in the state courts violated the Due Process or Equal Protection Clauses.

STATEMENT OF THE CASE

On September 12, 1967, Eugene Hairston was indicted (No. 67-3284) in Cook County, Illinois, on three (3) counts for solicitation to murder, two (2) counts of murder and two (2) counts for attempted murder. (R. 002-016) Pretrial bail was denied. (R. 077) In May 1968, petitioner was tried in the Circuit Court of Cook County (Criminal Division) before Judge Louis A. Wexler. Hairston was convicted by a jury of soliciting a thirteen (13) year old boy to shoot and kill certain young men that had alienated Hairston. (R. 812, 959, 1149) At the time of the shootings, Petitioner was the leader of a Chicago street gang known as the Black Stone Rangers. (R. 842, 987) The young boy solicited by Hairston shot three young men as they sat in a automobile, wounding two (2) and killing one (1). (R. 706, 959, 1149) After the conviction but before sentencing, Petitioner was granted bail in the amount of $15,000. (R. 2023) During the hearing in aggravation and mitigation prior to sentencing, Judge Wexler was informed that (1) in 1961, Petitioner was sentenced to six (6) months in the Illinois House of Correction for aggravated battery, (2) in 1965, he was granted probation but subsequently violated the same, receiving sixty (60) days in Vandalia (Illinois); and (3) in March and again in May, 1967, Petitioner was twice convicted for resisting arrest. (R. 2129-30) Two witnesses testified for the defense in mitigation but gave no indication that the Petitioner had changed his previously apparent habitual violent and anti-social behavior. (R. 2151-69) Judge Wexler sentenced Hairston to the Illinois

Penitentiary for not less than five (5) nor more than fifteen (15) years. In the exercise of his discretion, the court denied the Petitioner bail pending appeal. (R. 2177, 2179)

Petitioner directly appealed his conviction to the Supreme Court of Illinois. The appeal is presently pending. On three separate occasions, he has unsuccessfully petitioned for bond on appeal from the Supreme Court; before a single justice on September 3 and October 1 of 1968, and, before the full Supreme Court on October 3, 1968. Denials were without opinion. In the Supreme Court of the United States twice, Petitioner's motion for bail has been denied (on November 18, 1968 by Mr. Justice Marshall; and, by the Court on December 9, 1968).

On April 25, 1969, a petition for Writ of Habeas Corpus was denied by Judge Marovitz sitting in the United States District Court for the Northern District of Illinois, Eastern Division (Memorandum Opinion No. 69 C 711). A Motion for Emergency Relief was denied by the United States Court of Appeals for the Seventh Circuit on May 5, 1969, rehearing denied on July 22, 1969, and a certificate of probable cause was denied on August 12, 1969.

REASONS FOR DENYING THE WRIT

I.

PETITIONER HAS NO ABSOLUTE RIGHT TO BAIL PENDING APPEAL UNDER THE EIGHTH AMENDMENT.

Theoretically, the commandment of the Eighth Amendment that "[e]xcessive bail shall not be required" reasonably evokes a dichotomous interpretation: either, (1) creating an absolute constitutional right to bail; or, (2) prohibiting excessive bail when granted within the discretion of the court or as directed by statute. The latter interpretation is clearly more logical and efficacious when the two hypotheses are analyzed from the genesis and purpose of the American bail system.

Our contemporary bail concept had its beginning in medieval England. Bail, as a formal legal tool, evolved from necessity to implement the 39th Chapter of the Magna Carta which promised that no free man should be arrested or detained in prison unless by the law of the land.[1] Apparently, the first definitive institutionalization of the right to bail occurred in 1275 in the Statute of Westminster I.[2] The aforementioned statute, establishing the right to bail, was subsequently implemented by the Petition of Right of 1628, the Habeas Corpus Act of 1679, and the Bill of Rights of 1689.[3] In the American colonies, the first sig-

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1. Foote, "The Coming Constitutional Crisis in Bail, Part I," 113 U. of Penn. L.R. 959, 965-66 (1965).

2. 1275, 3 Edw. 1, C. 15.

3. (a) Petition of Right of 1628, 3 Charles 1, C. 1, was the result of Darnel's case, 3 How. St. Tr. 1 (1627), and

nificant provisions for bail were also statutory.[4] During the colonial era, in England and the colonies, there were numerous offenses made non-bailable by statute in addition to crimes punishable by death. It is interesting to note that the Virginia Declaration of Rights of 1776, one of the first colonial constitutions, failed to establish an absolute right to bail and merely restated the English Bill of Rights prohibiting excessive bail, excessive fines, or cruel and unusual punishment. And Madison, in proposing the Eighth Amendment to the United States Constitution, apparently reechoed this same language from the 1776 Declaration of Rights. The Northwest Ordinance of 1787 established that "all persons shall be bailable, unless for capital offenses, where the proof shall be evident, or the presumption great." This ordinance became the antecedent of most of the state constitutional and statutory bail provisions. The above language also formed the conceptual nucleus for the Judiciary Act of 1789 and the present Rule 46 of the Federal Rules of Criminal Procedure, 18 USCA §§3146, 3148.[5]

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made the provisions of the Magna Carta applicable to pretrial imprisonment.

(b) Habeas Corpus Act of 1679, 31 Charles 2, C. 2, provided a remedy for those persons accused of bailable offenses who had no bail.

(c) Bill of Rights of 1689, 1 Wm. & Mary, Sess. 2, C. II, §1(10) reacted to the practice of the English judiciary in setting impractically high pretrial bails by requiring that excessive bails should not be set.

4. E.g., Massachusetts Body of Liberties of 1641—Provided that all crimes were bailable except for capital offenses, the latter being bailable at the judge's discretion.

5. (a) Judiciary Act of 1789,
Act of September 24, 1789, §33, 1 Stat. 73, 91.

Traditionally, the purposes of bail were threefold: (1) to insure the appearance of the accused for trial, (2) to prevent infliction of punishment prior to conviction, and (3) to permit the unhampered preparation of a trial defense. *Stack* v. *Boyle,* 342 U.S. 1 (1951); *Ex parte Milburn,* 34 U.S. 704, 710 (1835). Generally then, bail was a pretrial adjunct to assist the accused in preserving his presumption of innocence. Consequently, in view of the above-mentioned purposes for bail, it was neither ideologically necessary nor functionally efficiacious for the legal institutional evolution to provide an absolute right to bail in all circum-

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(b) Rule 46. Release on bail.

"(a) Right to Bail:

(1) Before conviction. A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by a court or judge with authority by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

(2) Upon Review. Bail may be allowed pending appeal or certiorari, unless it appears that the appeal is frivolous or taken for delay.

(c) Terms. The amount thereof shall be such as in the judgment of the court will insure the presence of defendant, having regard to the nature and circumstances of the offense charged, weight of evidence against him, financial ability of defendant to give bail and the character of the defendant."

stances; and, there was not.[6] Notwithstanding the reasons for the proposition that there is no constitutional right to bail prior to trial, upon conviction, the accused's presumption of innocence is lost and most reasons supporting the argument that there is an absolute right to pretrial bail are negated. The accused becomes a defendant seeking reversal of his conviction with a relatively stronger motivation to flee the jurisdiction of the court. The majority of jurisdictions clearly reflect that there is no absolute right to bail pending appeal and the matter is solely within the reasonable discretion of the trial court.[7] The previous rule is sound for an additional reason, i.e., since there is no constitutional right to appeal per se, it follows that there should be no constitutional right to bond pending appeal. See *Griffin* v. *Illinois,* 351 U.S. 12 (1956).

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6. See Carlson v. Landon, 342 U.S. 524 (1952); Mastrian v. Hedman, 326 F. 2d 708, 710 (8th Cir. 1964), *cert. denied,* 375 U.S. 942 (1964).

7. E.g., (a) FEDERAL

(1) 18 USCA §§3146, 3148
(2) Bowman v. United States, 85 S. Ct. 232 (1964)
(3) United States ex rel. Fink v. Heyd, 408 F. 2d 7 (5th Cir. 1969)

(b) STATE

(1) ARIZONA:
In re Welisch, 18 Ariz. 517, 163 Pac. 264 (1917)
Const. Art. 2, § 22
Pen. Code 1913, § 1190

(2) ARKANSAS:
Lane v. State, 217 Ark. 428, 230 S.W. 2d 480 (1950)
Const. Art. 2, §§8, 9
Ark. Stat. §43-2714

In summary, the Respondents respectfully submit that since the Eighth Amendment does not require an absolute right to bail either prior to trial or pending appeal, the denial of petitioner's bail pending appeal by the Illinois Courts does not begin to raise a constitutional question of Eighth Amendment magnitude.

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(3) CALIFORNIA:
In re Scaggs, 47 Cal. 2d 416, 303 P. 2d 1009 (1964)
West's Ann. Pen. Code, §§1270-1272

(4) COLORADO:
Smaldone v. People, 153 Col. 208, 385 P. 2d 127 (1963) *cert. denied* 382 U.S. 1012 (1963)

(5) FLORIDA:
Younghans v. State, 90 So. 2d 308 (Fla. 1956)
F.S.A. Const. Declaration of Rights, §9
F.S.A. §903.01

(6) GEORGIA:
Ingram v. Grimes, 213 Ga. 652, 100 S.E. 2d 914 (1957)
Laws 1916, p. 157; Code, §6-1005

(7) IDAHO:
State v. Dunn, 91 Idaho 870, 434 P. 2d 88 (1967)
I.C. §§19-2806, 19-2905.

(8) ILLINOIS:
People v. Davis, 1 Ill. C.C. 528 (1901)
Bennett v. People, 94 Ill. 581 (1880)
People v. Vaseska, 74 Ill. App. 2d 297 (1966)

(9) INDIANA:
State ex rel. VonHauger v. Criminal Court of Marion County, 247 N.E. 2d 87 (1969)
Supreme Court Rules, rules 2-3

(10) KENTUCKY:
Braden v. Lady, 276 S.W. 2d 664 (Ky. 1955)
Const. §§16 , 17
Cr. Code Prac. §75

II.

PETITIONER'S DENIAL OF BAIL PENDING APPEAL WAS NOT VIOLATIVE OF DUE PROCESS OR EQUAL PROTECTION.

"One law for the lion and ox is oppression."
William Blake . . . .

In the present context, the allegations of Due Process and Equal Protection violations and the resultant answers are of such similar character as to merit a unitary re-

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(11) MARYLAND:
Fischer v. Ball, 212 Md. 517, 129 A. 2d 822 (1957)
Const. Declar. of Rights , Art. 5
Code 1951, Art. 5, Sec. 86

(12) MICHIGAN:
People v. Giacalone, 16 Mich. App. 352, 167 N.W. 2d 871 (1969)
M.C.L.A. Const. 1963, Art. 1, §§15, 16
M.C.L.A. §§765.5, 765.6

(13) MINNESOTA:
State v. Freitag, 281 Minn. 573, 161 N.W. 2d 530 (1968)
M.S.A. §§633.20, 633.21

(14) MISSISSIPPI:
Ex parte Willette, 219 Miss. 785, 63 So. 2d 52 (1953)
Const. 1890, §29
Code 1942, §1180

(15) MISSOURI:
Ex parte Carey, 306 Mo. 287, 267 S.W. 806 (1924)
Rev. Stat. 1919, §4092

(16) MONTANA:
Bubnash v. State, 139 Mt. 639, 366 P. 2d 867 (1961)
R.C.M. 1947, §94-8305

sponse. The present issue is simply: was denial of petitioner's bail pending appeal by the Illinois Courts so arbitrary and capricious to be fundamentally unfair?

In Illinois, in nearly all cases the accused has a statutory right to bail while his trial is pending. Ill. Rev. Stat. 1967, Ch. 38, §110-4(a). When there has been a conviction, how-

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(17) NEW HAMPSHIRE:
State v. Hutton, 107 N.H. 426, 223 A. 2d 416 (1966)

(18) NEW JERSEY:
State v. Biehl, 136 N.J.L. 82, 54 A. 2d 231 (1947)
N.J.S.A. 2: 195A-6

(19) NEW MEXICO:
Tijerina v. Baker, 78 N.M. 770, 438 P. 2d 514 (1968)
Const. Art. 2, §13

(20) NEW YORK:
People ex rel. Shapiro v. Keeper of City Prison, 290 N.Y. 393, 49 N.E. 2d 498 (1943)
Const. Art. 1, §5
Code Cr. Proc. §§552, 553

(21) NEVADA:
State v. Teeter, 53 C.A. 545, 200 P. 2d 657 (Nev. 1948)
Const. Art. 1, § 7

(22) NORTH CAROLINA
In re Ferguson, 235 N.C. 121, 68 S.E. 2d 792 (1952)
G.S. §15-183

(23) OHIO:
Coleman v. McGettrick, 2 Ohio St. 2d 177, 207 N.E. 2d 552 (1965) *cert. denied,* 382 U.S. 834 (1965)
Const. Art. I, §9
R.C. §§2949.02, 2953.09

(24) OREGON:
Hanson v. Gladden, 246 Or. 494, 426 P. 2d 465 (1967)
Const. Art. 1, §14
O.R.S. 140:020, 140:030

ever, the courts need not admit the defendant to bail. Ill. Rev. Stat. 1967, Ch. 38, §110-7(d); Ill. Rev. Stat. 1967, Ch. 110A, §609(b). *People v. Davis,* 1 Ill. C.C. 528 (1901); *Bennett* v. *People,* 94 Ill. 581 (1880). The Illinois constitutional "right" to bail refers only to the use of sureties to insure the presence of the accused at his trial as an alternative to

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(25) PENNSYLVANIA:
Commonwealth v. Keller, 433 Pa. 20, 248 A. 2d 855 (1969)
P.S. Const. Art. 1, §14
Pa. Rules Crim. Proc., rule 4004(b), 19 P.S. Appendix

(26) RHODE ISLAND:
Quattrocchi v. Langlois, 100 R.I. 741, 219 A. 2d 570 (1966)
Const. Art. 1, §9
Gen. Laws 1956, §12-19-1

(27) SOUTH CAROLINA:
Nichols v. Patterson, 202 S.C. 352, 25 S.E. 2d 155 (1943)
Const. Art. 1, §20
Code 1942, §§1031, 1032

(28) SOUTH DAKOTA:
City of Sioux Falls v. Marshall, 48 S.D. 378, 204 N.W. 999 (1925)
Const. Art. 6, §8
Rev. Code 1919, §5039

(29) TENNESSEE:
Goins v. State, 192 Tenn. 32, 237 S.W. 2d 8 (1950)

(30) TEXAS:
Ex parte Ezell, 40 Tex. 451 (1874)

(31) WASHINGTON:
Ex parte Berry, 198 Wash. 317, 88 P. 2d 427 (1939)
Const. Art. 1, §20
Rem. Rev. Stat. §§1747, 2310, 2410-1

being jailed.[8] Thus, petitioner's conviction eradicted any claim of an absolute constitutional or statutory right to bail on appeal; and, the state courts had authority to deny bail on appeal within their discretion. The question becomes: was there an unreasonable abuse of discretion sufficient to violate the federal constitution?

The salient facts apparent to the state courts during the exercise of their discretion in denying petitioner bail pending appeal are these. On September 12, 1967, Eugene Hairston was indicted (No. 67-3284) in Cook County, Illinois, on three (3) counts for solicitation to murder, two (2) counts of murder, and two (2) counts for attempted murder. (R. 002-016). Petitioner was tried and convicted by a jury of three (3) counts of solicitation to murder, i.e., soliciting a thirteen (13) year old boy to shoot and kill certain young men that had been "messing with the chief." (R. 812, 959, 1149) At the time of the murder, petitioner was Chief of the Black Stone Rangers. (R. 842, 987). The Black Stone Rangers are a Chicago street gang. The Illinois courts have frequently confronted and acknowledged the often vio-

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(32) WEST VIRGINIA:
State ex rel. Burford v. McKee, 135 W.Va. 18, 62 S.E. 2d 281 (1950)
Code, 62-1-6

(33) WYOMING:
State v. Helton, 72 Wyo. 105, 261 P. 2d 46 (1953)
Const. Art. 1, §14
W.C.S. 1945, §§3-5414, 10-1411

8. Constitution of Illinois 1870, Art. II, §7: "all persons shall be bailable by sufficient sureties, except for capital offense, where the proof is evident or the presumption great; . . ."

lent and anti-social behavior of such "street" associations.[9] The young boy solicited by Hairston shot three (3) young men, wounding two (2) and killing one (1). (R. 706, 959, 1149). After conviction and during the hearing in aggravation and mitigation prior to sentencing, the court was informed that (1) in 1961, petitioner was sentenced to six (6) months in the Illinois House of Correction for aggravated battery, (2) in 1965, he was granted probation and subsequently violated that probation, receiving sixty (60) days in Vandalia (Illinois), and (3) in March and again in May, 1967, petitioner was twice convicted for resisting arrest. (R. 2130). The two witnesses testifying for the defense in mitigation gave no indication that the petitioner had changed his previously apparent habitual violent and anti-social behavior. (R. 2151-69).

Although the federal standard for admission to bail is not binding upon the states per se, test of the present issue

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9. (a) People v. Richardson, 32 Ill. 2d 479, 207 N.E. 2d 449 (1965)

Vice Lords and Cobras

(b) People v. Hill, 39 Ill. 2d 125, 233 N.E. 2d 367 (1968)

Casanova Cobras and Roman Saints

(c) People v. Wrenn, 29 Ill. 2d 581, 195 N.E. 2d 154 (1964)

People v. Hughes, 26 Ill. 2d 114, 185 N.E. 2d 834 (1962)

Vice Lords

(d) People v. Lewis, 32 Ill. 2d 391, 207 N.E. 2d 65, (1965)

Egyptian Cobras and Vice Lords

against this standard provides a juxaposition for a reasonable analysis and reveals not only that the denial of petitioner's bail pending appeal was proper but demanded of the state courts.

Section 3148 of Title 18 of the United States Code requires that "a person . . . who has been convicted of an offense [shall be released pending appeal] unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community." In *Sellers* v. *United States*, 89 S. Ct. 36, 38 (1968), Justice Black, sitting as a Circuit Justice, declared that if 'dangerousness' is "ever a justifiable ground for denying bail as distinguished from a separate proceeding for a bond to keep the peace—[it must] relate to some kind of danger that so jeopardizes the public that the only way to protect against it would be to keep the applicant in jail." In complement, however, Justice Douglas declared in *Carbo* v. *United States*, 82 S. Ct. 662, 666 (1962) and *Rehman* v. *State of California*, 85 S. Ct. 8, 9 (1964) that if the "safety of the community would be jeopardized, it would be irresponsible judicial action to grant bail."

The trial testimony, the jury's conviction on three (3) counts for solicitation to murder, the prosecution's revelations during the hearing in aggravation and mitigation, and petitioner's past criminal record, all attested to the habitual violent behavioral patterns of the defendant. Although the trial court did not explicitly explain the reasons for denial of petitioner's bail pending appeal, he need not—for the record before him declared clearly, succinctly, and substantially why bail should be denied. See *United States* v. *Blyther*, 295 F. Supp. 1088, 1090 (D.D.C. 1969).

The test for determining whether a particular state action has violated Fourteenth Amendment Due Process or whether a right extended by the United States Constitution relative to federal criminal proceedings is also applicable to the states via Fourteenth Amendment Due Process has been phrased by the Supreme Court of the United States in various ways. The question is whether a particular right is among those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," *Powell* v. *Alabama,* 287 U.S. 45, 67 (1932) [quoting from *Hebert* v. *Louisiana,* 272 U.S. 312, 316 (1926)]; or, whether it is "basic in our system of jurisprudence," *In re Oliver,* 333 U.S. 257, 273 (1948); or, whether it is a "fundamental right, essential to a fair trial," *Gideon* v. *Wainwright,* 372 U.S. 335, 343-44 (1963); *Malloy* v. *Hogan,* 378 U.S. 1, 6 (1964); *Pointer* v. *Texas,* 380 U.S. 400, 403 (1965); or, whether it "shocks the conscience," *Rochin* v. *California,* 342 U.S. 165, 172 (1952); or, whether it is "fundamental to the American scheme of justice" or, "represents a fundamental ideal in our constitutional heritage." *Duncan* v. *Louisiana,* 391 U.S. 145, 149 (1968); *Benton* v. *Maryland,* 395 U.S. 784, 794 (1968), correspondingly. And, as stated in *Betts* v. *Brady,* 316 U.S. 455, 462 (1942): "[An] asserted denial [of Due Process] is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in light of other considerations, fall short of such denials."

Within the purview of the above-mentioned Due Process rationale, the state respectfully observes that the facts of the present case negate any allegation that there was an

arbitrary abuse of discretion and consequent Due Process violation by the state. Determination of bail is and should be a highly individualized process, necessitating the giving of significant deference to the trial judge's determination.[10] Such is the case presented.

CONCLUSION

For the reasons stated herein, Respondents request that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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10. See Sellers v. United States, *supra* and People of the State of New York v. Hutchinson, 360 F. 2d 759 (2nd Cir. 1966).

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REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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This case raises issues of broad significance in state and federal criminal appeals: Is there an Eighth Amendment right to bail on appeal? Is the statutory availability of bail on appeal subject to fair rules and standards of due process of law, and the even handed application required by equal protection of the laws?

The State (St. Ans. pp. 4-8) questions whether there is a right to bail under the Eighth Amendment—and concludes (at p. 6) "it was neither ideologically necessary nor functionally efficacious" for such a right—without citation of authority. But what about *Herzog* v. *United States,* 75 S. Ct. 349, 351 (1955)? Douglas, J., sitting as a Circuit Justice, decided in a case on bail on appeal:

> "Bail is basic to our system of law. See the Eighth Amendment; *Stack* v. *Boyle,* 342 U.S. 1 (1951)."

And what of the decisions of a federal appeals court in *Pilkinton* v. *Cir. Ct. of Powell County, Mo.,* 324 F. 2d 45, 46 (8th Cir. 1963), and of this Court in *Robinson* v. *California,* 370 U.S. 660 (1962) (Pet. p. 10)?

The State of Illinois does not quarrel with the proposition that Illinois applies the standards of federal law (Pet. pp. 10 and 11) when dealing with the issue of bail on appeal. But

> ". . . federal law reflects the purpose that 'no one shall be required to suffer imprisonment for crime before the determination of his case in the court of last resort.'" (Mr. Justice Butler, sitting as a Circuit Justice, *United States* v. *Motlow,* 10 F. 2d 657, 662 (7th Cir. 1926), 82 S. Ct. 526, 528, 7 L. Ed. 2d 516, 520 (1962, Douglas, J., as Circuit Justice)

Yet where does Illinois practice meet the purpose of federal law? Nowhere does the State doubt that the appeal raises serious issues, or say that the appeal is frivolous. Note Warren, C.J., as Circuit Justice, on the need to allow bail where an appeal is not frivolous:

> ". . . unless he is now admitted [to bail] he might of necessity serve more than the minimum term of his sentence before there is an adjudication in the Court of Appeals. In those circumstances, his appeal

would be of little benefit to him even if he should prevail." *Ellis* v. *United States,* 79 S. Ct. 428, 3 L. Ed. 2d 565 (1959).(*)

And, if we are dealing with fair standards of due process and equal protection of the laws, where according to the State of Illinois are these standards? The State says (St. Br., p. 7):

> "Notwithstanding the reasons for the proposition that there is no constitutional right to bail prior to trial, upon conviction, the accused's presumption of innocence is lost and most reasons supporting the argument that there is an absolute right to pretrial bail are negated. The accused becomes a defendant seeking reversal of his conviction with a relatively stronger motivation to flee the jurisdiction of the court. The majority of jurisdictions clearly reflect that there is no absolute right to bail pending appeal and the matter is solely within the reasonable discretion of the trial court. The previous rule is sound for an additional reason, *i.e.,* since there is no constitutional right to appeal per se, it follows that there should be no constitutional right to bond pending appeal. See *Griffin* v. *Illinois,* 351 U.S. 12 (1956)."

Griffin stands for no such nonsense.

(*) At the time of preparation of this reply, the State of Illinois is in default on filing its answer on the merits of petitioner's appeal (due, on its request for a continuance, on February 5, 1970, in the Illinois Supreme Court). He has been jailed since August 14, 1968, when his appeal bond was denied. He previously served 7 months pending trial without bond. Under Illinois law on his sentence of 5 to 15 years with credit for good time served, petitioner's minimum sentence could be 3 years 9 months (although he would be subject to parole control until the expiration of the full fifteen years).